

THE PACIFIC RAILROADS.

SUGGESTIONS

SUBMITTED TO THE

Hon. Charles Devens,

Attorney-General of the United States,

ON THE

RESOLUTIONS OF THE SENATE AND HOUSE OF REPRESENTATIVES
IN RESPECT TO THE OPERATION OF THE UNION
PACIFIC RAILROAD AND BRANCHES.

ON BEHALF OF SAID RAILROAD COMPANY.

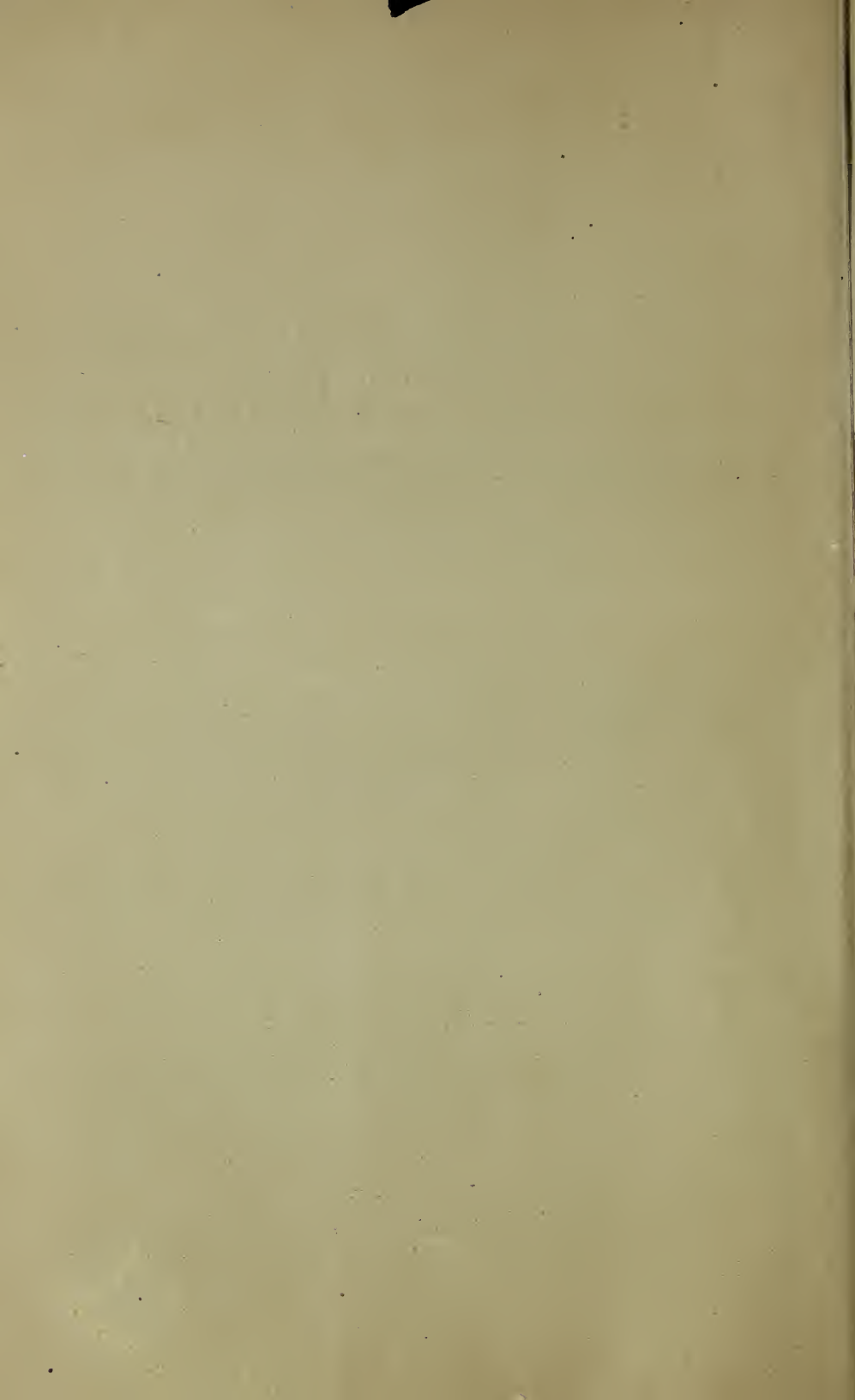
By A. J. POPPLETON,

Gen'l Att'y, U. P. R.R. Co.

WASHINGTON, D. C.

GIBSON BROTHERS, PRINTERS.

1877.



THE PACIFIC RAILROADS.

SUGGESTIONS

SUBMITTED TO THE

Hon. Charles Devens,

Attorney-General of the United States,

ON THE

RESOLUTIONS OF THE SENATE AND HOUSE OF REPRESENTATIVES
IN RESPECT TO THE OPERATION OF THE UNION
PACIFIC RAILROAD AND BRANCHES.



ON BEHALF OF SAID RAILROAD COMPANY.

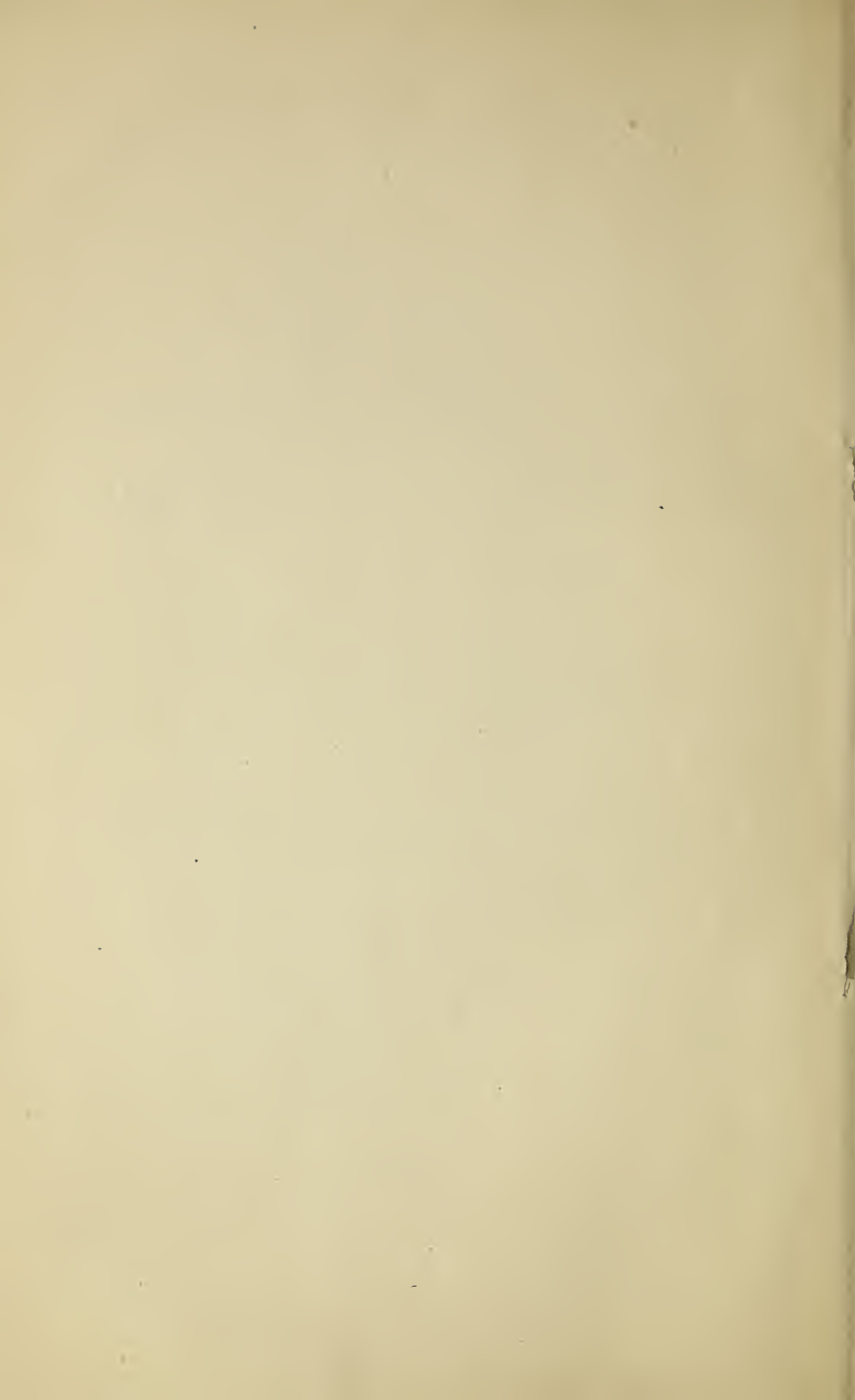


By A. J. POPPLETON,

Gen'l Atty, U. P. R.R. Co.



WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1877.



THE PACIFIC RAILROADS.

ORIGIN AND PURPOSE OF THE RESOLUTIONS.

The resolutions under consideration, though adopted by both Houses of Congress, are identical in substance, and unquestionably received their inspiration from the same source. Though, in form, a simple resolve that the "President be requested to inform the respective bodies what legal impediments, if any, exist which prevent him from executing said laws in accordance with the obligations accepted and agreements made by said Union Pacific Railroad Company and branches," they are, in truth, under the guise of solicitude for the public interest, an assault by one corporate body upon another, and they originate in a private grievance. Thus their introduction into the Senate was made the occasion of an elaborate arraignment of the Union Pacific Company, upon assumed violations of the law, without proof of such delinquency, without any exposition of the provisions alleged to have been disregarded; but, on the contrary, with a studied perversion of facts and law—conclusive of the *animus* and purpose from which they spring. It is well, therefore, to proceed somewhat cautiously, lest it may turn out an inquiry what impediments, if any, exist to the accomplishment of some pecuniary, private end by the corporation instigating and pressing this controversy.

I propose, therefore, to inquire:

1. What specific acts of the Union Pacific Company are alleged as breaches of the acts of Congress creating and regulating that corporation?
2. Which, if any, of them are true in fact; and, if true, are they a violation of said acts of Congress?
3. To what extent is the Kansas Pacific Railroad Company entitled to the benefit of the provisions of the acts of Congress invoked on its behalf against the Union Pacific Company?

4. What impediments exist to the judicial establishment of its alleged legal rights?

5. What is the interest of the public and the Government in respect to this controversy?

ACTS OF ALLEGED VIOLATION OF CHARTER.

As the resolutions are silent in respect to the specific acts constituting a violation of the acts of Congress, we must look elsewhere for a statement of them. Two sources are available for this purpose, originating—the one in the circuit court of the United States for the district of Nebraska; the other in the Senate, both finding their confluence in this hearing, the advocacy of the public wrong being now transferred from the public servant and devolved upon the advocates of a private interest and client. As the specifications of offences against the statute contained in the speech in support of the Senate resolution are singularly vague and uncertain, it will be safer to resort mainly to the more exact statement contained in the bill of complaint of the Kansas Pacific Railroad Company in its suit to compel the Union Pacific Company to obey and observe its alleged rights, lately, by consent and agreement of parties, submitted upon full argument to the court, and now by it held under advisement for speedy decision. Lest, however, it might give rise to misapprehension not to make some reference to the alleged breaches of the law enumerated in the arraignment of the Union Pacific Company accompanying the senatorial resolution, a brief reference will be made to them. They are contained in a single page, of the sixteen-page exposition of them, now under consideration, and commence as follows:

ALLEGED DISCRIMINATIONS.

“The young and vigorous State which I have the honor in part to represent in this chamber is practically embargoed by the refusal of these roads to comply with the law. No article of commerce raised or manufactured can be transported west of Cheyenne without paying more for freight, even for fifty-seven miles, than is charged from Omaha to Ogden, a distance of 1,032 miles. I select a few examples of discrimi-

“ nation from late tariff rates by the car-load of ten tons : On
 “ bacon the charges from Cheyenne to Ogden exceed those from
 “ Omaha to Ogden \$45 ; for beans, \$85 ; for mess-beef, \$81 ;
 “ coal oil, \$81 ; grain, \$88 ; hides, \$213.50 ; lard, \$71.50 ; lum-
 “ ber, \$70 ; powder, \$108 ; sugar, \$81. Excess of charges in a
 “ single train of fourteen cars for 516 miles over 1,032 miles is
 “ \$1,054.40. Neither Kansas, Colorado, nor Missouri can ship
 “ bacon, mess-beef, grain, live stock, &c., *via* Cheyenne, to any
 “ of the Western States or Territories, and all are entirely shut
 “ out from the markets of Utah, Montana, Nevada, and other
 “ regions. Like discriminations are made by the Union Pacific
 “ Company in freight traffic by the hundred weight.”

The statements contained in the foregoing paragraph are erroneous—not true in fact. No freight or passengers of any kind or class, whether received from the Kansas Pacific, or otherwise, at Cheyenne, is charged more for carriage from Cheyenne to Ogden than is charged on like freight and passengers from Omaha to Ogden. It is not done in fact, nor do the tariffs and orders of the Union Pacific Company permit it. The statement of excess of charges is wholly unfounded in fact, as witness the order annexed, marked Exhibit “A.” If the State of Kansas and the Territory of Colorado cannot ship *via* Cheyenne to any of the Western States or Territories, it is due not to the rates imposed upon freight and passengers between Cheyenne and Ogden by the Union Pacific, but the rates imposed by the Kansas Pacific Company or Denver Pacific Company, or by both. A brief array of figures, taken from published tariffs, will establish this fact. In connection with this it should be remembered that by the act of Congress—the act of March 9, 1869—relied upon by the Kansas Pacific to impose itself upon the Union Pacific as a branch, the power of the Denver Pacific to regulate its own tariffs is expressly reserved to that corporation by Congress, its tariffs being, by affirmative act of Congress, placed beyond the reach of either of the other companies.

NO DISCRIMINATION AGAINST COLORADO AND KANSAS.

Nine-tenths of the freight and passengers originating in Colorado, to reach the Western States and Territories *via*

Cheyenne, must pass over the entire length of the Denver Pacific, which has always been practically managed by the Kansas Pacific. A comparison of tariffs reveals the astounding fact that the rates of freight from Cheyenne to Denver, a distance of 106 miles, are in all instances nearly equal, and in some instances greater than on the same class from Cheyenne to Ogden, a distance of 516 miles, nearly five times the greater distance.

	106 Miles <i>Denver to Cheyenne.</i>	516 Miles <i>Cheyenne to Ogden.</i>
First class.....	\$2 35 per 100	\$2 19 per 100
Second class.....	1 75 “	1 89 “
Third class....	1 35 “	1 61 “

These figures show conclusively not only that the exorbitant tariff of the Denver Pacific (which is in no respect subject to our control or influence) is the chief and effectual obstacle against the trade and commodities of Colorado reaching the Western States and Territories, but that, so far from discriminating against business brought by it to us, we carry their business over the Union Pacific, from Cheyenne to Ogden, at about one-fifth the rate per mile charged by that company over its own road. This shows why Colorado products do not go westward, and why Utah potatoes and California fruit are compelled to pay such enormous tribute to reach Colorado. Of that tribute, the Union Pacific, with 516 miles of road, takes one-half, and the Denver Pacific, with one-fifth the mileage, takes the other half.

If, then, the following statement is true and the figures therein given correct, one-half the respective amounts go into the treasury of the Denver Pacific, thus reducing the amount received by the Union Pacific to a less mileage rate than received by the Central Pacific or Denver Pacific, and affording a conspicuous example of the extent to which figures may be manipulated to deceive and mislead:

“During the years 1875–76, the crops in Colorado were
 “nearly all destroyed by grasshoppers, and our people had to
 “depend on California and other States to supply the defi-
 “ciency. Potatoes were purchased in Texas and shipped to
 “Denver, a distance of over two thousand miles, cheaper than
 “they could be had from Ogden, in Utah, about one-quarter

“ the distance. On cabbage by the car-load the charges from
 “ Sacramento to Denver are \$515, distributed as follows: Sac-
 “ ramento to Ogden, 743 miles, \$195.50; Ogden to Cheyenne,
 “ 516 miles, \$229.50; Cheyenne to Denver, 106 miles, \$90.
 “ One firm in Denver purchased in California last year 160 car-
 “ loads of fruit, the freight rates being more to Denver than to
 “ Chicago. In car-load lots the rate from San Francisco per
 “ 100 pounds to Chicago are \$1.50; to St. Louis, \$1.50; to New
 “ York, \$1.50; to Cincinnati, \$1.60; to Denver, \$1.94, or forty-
 “ four cents per 100 pounds more to Denver, being one thou-
 “ sand miles less distance than the nearest of the other points
 “ named.”

While the disparity in the carriage of passengers is less, it is also true that the Union Pacific has heretofore carried and still transports passengers, originating in Colorado and reaching its road at Cheyenne, both east and west, at a less mileage rate than charged on the Denver Pacific.

The assertion that freight on car-load lots of fruit per hundred pounds from San Francisco to Chicago, New York, Cincinnati, and St. Louis, is less than from San Francisco to Denver, if true, is due to the fact that the rate from Cheyenne to Denver, 106 miles—over the Denver Pacific—is more than from Omaha to Chicago, New York, Cincinnati, or St. Louis; that is to say, it is due to the outrageous discrimination of the Denver Pacific—which has absolute control of its own tariffs—in exacting a rate for 106 miles greater than that exacted east of Omaha over a distance of from 500 to 1,000 miles, the actual excess of exaction by the 106-mile road being 44 cents per hundred pounds.

Great stress is laid upon the assertion that a car-load of beer was charged a higher rate from Cheyenne to Laramie than the entire through rate on like carriage. Yet it is notorious that at this time the Denver Pacific maintained rates on its road which amounted to an embargo on any freight tendered by the Union Pacific. This discrimination was made, if at all, not, as is asserted, to compel the Colorado car-load of beer to traverse the whole line of the Union Pacific road, but to reciprocate the courtesies of the Denver Pacific in absolutely shutting the Union Pacific out of Colorado. If Colorado is a “forbidden land” to overland freight and passengers, it is due to the exactions of the Denver

Pacific, over whose rates the Union Pacific or the Government have no control.

Recently a railroad has been built from Cheyenne to Longmount, thus making connection with Denver by way of the Colorado Central, which will result in relieving the people and business of Colorado from the exactions of the Denver Pacific, and enable it to flow to and from both the East and West, *via* the Union Pacific, at reasonable rates.

An examination and comparison of the local tariffs of the Kansas Pacific will conduct to like conclusions, as appears from the following, and show that it practises the same discriminations charged upon us :

The rates from Kansas City to Denver, a distance of 639 miles, and from Kansas City to Cheyenne, a distance of 745 miles, compare as follows :

	<i>K. C. to D.</i>	<i>K. C. to Chey'ne.</i>
First class	\$2 40	\$1 90
Second do.....	2 00	1 60
Third do.....	1 75	1 30
Fourth do.....	1 40	1 25

giving an average from Kansas City to Denver—the shorter distance—of \$1.88, and from Kansas City to Cheyenne, the longer distance, of \$1.51, both being nearly the average rate of the Union Pacific west of Cheyenne, which is \$1.89. It thus appears not only that the Kansas Pacific practises the same discriminations with which we are charged, but that we haul its freight west of Cheyenne at a mileage rate exceeding theirs less than the excess to which we are entitled by reason of the increased cost of the maintenance and operation of our road, as hereafter appears, while the discriminations of the Denver Pacific greatly exceed those of either of the other companies. An examination of the passenger business interchanged between the roads will conduct to like conclusions.

Upon this subject it only remains to notice the statement contained in Appendix B of the Memorial of Committee of Bondholders of April 21, 1877, and in the memorial of citizens of St. Louis, being tabular statements of comparative rates from Omaha to Ogden and from Cheyenne to Ogden, showing excesses of the latter over the former. These statements, like those con-

tained in the senatorial exposition of this subject, are simply erroneous, not true in fact, as already appears from the order of General-Freight Agent Vining already referred to as "Exhibit A." The committee of bondholders, in their supplemental memorial of October 10, 1877, allege, "that it is unlawful for the " Union Pacific Railway Company to charge higher rates per " mile on freight and passengers received from or delivered to the " Kansas Pacific and Denver Pacific Railroad than the proportionate mileage charge on similar business received from or " delivered to other persons and corporations." No additional charge is imposed upon their business over that of other persons or corporations at the same point, and it is hauled in most instances as low per mile as over their own roads or any branches of the Union Pacific.

The rates from Cheyenne to San Francisco of which the Kansas Pacific complain are materially lower per ton per mile than are the rates charged by the Kansas Pacific for transportation from Kansas City to Denver, as is shown by the following table, viz:

	1st Class.	2d Class.	3d Class.	4th Class.
Rates Kansas City to Denver...	\$2 40	\$2 00	\$1 75	\$1 40
Rates per ton per mile.....	7 52	6 27	5 49	4 39
Rates Cheyenne to San Francisco	4 50	3 75	2 75	2 25
Rates per ton per mile.....	6 44	5 43	3 93	3 22
Excess of K. P. rates per ton per mile above U. P. rates.....	1 08	84	1 56	1 17

Hence it results that the Union Pacific has not discriminated against the business of the Denver Pacific and Kansas Pacific originating in Colorado and Kansas, but, on the contrary, has transported it at a mileage rate fairly proportionate to the rate charged by those companies for transportation over their own roads.

THE BUSINESS OF MISSOURI AND NEIGHBORING STATES.

Equally erroneous is the statement that Missouri and other neighboring States are excluded from commerce and intercourse with the Western States and Territories by the exactions of the Union Pacific. So far from having even a semblance of truth, it affords the shortest and best line from Kansas City, the eastern

terminus of the Kansas Pacific and Denver Pacific, to the West and the Pacific ocean. It has the advantage both in distance and the character of its road. From Omaha to Cheyenne the distance is 516 miles. From Kansas City to Cheyenne, *via* Denver, is 745 miles, making a difference in favor of the Union Pacific of 229 miles. From Kansas City to Cheyenne, *via* Omaha, is 720 miles, thus making a difference in favor of the Omaha route of 25 miles in distance. Therefore the statement that those States are deprived of access to the overland route by the declination of the Union Pacific to carry their business when received from the Denver Pacific and Kansas Pacific at Cheyenne over the west half of our road at less than cost of carriage, (as I shall hereafter show,) thus making us compensate them for the natural inferiority of their road, arising from its greater length, is not only untrue but absurd. If the legislatures of the States of Missouri and Illinois have memorialized Congress on this subject, it was done undoubtedly at the instance of some private interest and without deliberate consideration. It is an historical fact susceptible of absolute proof that the resolutions alleged to have been passed by the General Assembly of Illinois were defeated, and that after such defeat, when that body had dispersed and no quorum was in attendance, those resolutions were resurrected, and in some way certified and got before Congress, without ever having received the approval of the General Assembly of that State. The Union Pacific is open and unobstructed, affording facilities impossible to the Kansas Pacific, by reason of its greater length and other organic infirmities.

Thus far we fail to find any discrimination against the Kansas Pacific or any distinct and concise statement of the exact fact constituting our offence against the acts of Congress, nor is any statement or definition of it attempted. It is simply *assumed* that we are by law required to do something, which is overladen and measurably concealed under the oft-recurring phrase "*pro rate*," and that in some way, not particularized, we have been derelict in that regard. Turning, therefore, from necessity, to the suit of the Kansas Pacific Railway Company and the Denver Pacific Railway & Telegraph Company, a transcript of the entire record of which is before you, designated as

“Schedule A,” we are enabled to extract from the bill of complaint the exact nature and character of the offence alleged against us. It there appears that it is the theory of the parties pressing these resolutions that it is obligatory upon the Union Pacific under the law to receive from the Kansas Pacific and Denver Pacific, at Cheyenne, the point of junction, without regard to the place of its origin, all business brought by them, and transport it east or west to points on its road, or to the termini of its road, at a rate per mile obtained by dividing the lowest through rate of the Union Pacific, on business of the same class, by the number of miles hauled, and to deliver all business destined to said roads at Cheyenne, without regard to the place of its origin, at like rates, and give it speedy and like transit with its own. Or, to simplify the statement in its application to through freight—Cheyenne being equi-distant from Omaha and Ogden, the eastern and western terminus of the road—that it is the duty of the Union Pacific to charge said railroad companies, “the Government, and the public for the transportation of freight and passengers going to or from your orator’s railroad, between Ogden and Cheyenne, * * a rate of freight and fare not exceeding one-half of their rate for business and traffic of a similar description and character for the entire length of their line between Ogden and Omaha; that all excess of charge over said rate is unlawful, and a violation of the provisions of said acts of Congress in that behalf.”

Having, then, at last, a clear, comprehensive, sweeping, but specific statement of our alleged dereliction, we are now confronted with the inquiry, Do these allegations constitute a violation of the law? which necessarily leads to a construction of the provisions of the statute under which the question at issue arises. Assuming for the present that these provisions are binding upon the Union Pacific Company, the negative of which I shall hereafter show, I address myself to an interpretation of them.

CONSTRUCTION OF SEC. 12, ACT 1862, AND SEC. 15, ACT 1864.

Sec. 12, act of 1862, (12 Statutes at Large, 492,) so far as it relates to this subject, is as follows: “The whole line of said

“ railroad and branches and telegraph shall be operated and
 “ used for all purposes of communication, travel, and transpor-
 “ tation as one connected continuous line.”

Sec. 15, act of 1864, (13 Statutes at Large, 358,) is as follows :
 “ That the several companies authorized to construct the afore-
 “ said roads are hereby required to operate and use said roads
 “ and telegraph for all purposes of communication, travel, and
 “ transportation, so far as the public and the Government are
 “ concerned, as one continuous line, and in such operation and
 “ use to afford and secure to each equal advantages and facili-
 “ ties as to rates, time, and transportation, without any discrimi-
 “ nation of any kind in favor of the road or business of either
 “ of said companies, or adverse to the road or business of any
 “ or either of the others.”

THE ROADS NOT COMMON PROPERTY.

Any rule derived from the consideration of these sections which would have the effect to impose upon the one the duties and burdens or debts of the other, which would render the one liable for the defaults, failures, or delinquencies of the other, or which would consolidate the several corporations, used in constituting the main trunk of the road and its branches, and convert the capital lodged under the protection of the several charters into a common fund, is obviously and manifestly unwarranted in law. Else why are five different corporations, four of them State and one Federal—the Union Pacific—the Leavenworth, Pawnee & Western, *alias* Kansas Pacific E. D.—the Hannibal and Saint Joseph—the Sioux City and Pacific—and the Central Pacific—provided to accomplish a work which, if it was to be the product of a group of corporations practically consolidated, might better have been committed to a single company at the outset? Why provide in the legislation itself (sec. 7, act 1864, p. 356, 13 Stat.) that “ the failure of any one
 “ company to comply fully with the conditions and require-
 “ ments of this act or the act to which this is amendatory shall
 “ not work a forfeiture of the rights, privileges, or franchises
 “ of any other company or companies that shall have complied
 “ with the same;” or why, as in section 16 of the same act, make elaborate provision for the consolidation of these several

companies, by which the distinctive rights of property invested under the shelter of each individual franchise might become converted into a common fund, but that only by the consent of the stockholders of all? That Congress could have contemplated any construction of these acts which practically consolidated the property of these diverse corporations, without providing a common and single management, and merging them into one, with corporate power to administer the entire property, outruns credulity, and is too absurd for discussion. Such a construction would be equivalent to a declaration that the strongest corporation, the one freest from organic infirmities and under the wisest management, should bear the burdens, assume the weaknesses, pay the debts, and become the sponsor of the other, in respect to its duties and obligations to the Government and the public. We must look, then, for some interpretation which, while it will not "*communize*" the vast property sheltered by these different franchises, will insure such an administration of them as "*to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.*"

THE PHRASE "PRO RATE."

In all the papers referring to this controversy filed in the departments and in public speeches and memorials to either house of Congress, it is insisted that the Union Pacific is under legal obligation to "*pro rate*" with the Kansas Pacific. The phrase recurs too frequently to call for reference to any particular person or paper. These words are not found in the statute, and whatever they mean, if they are to control us, they must be injected into it by judicial construction.

If we are to consider the signification of the words alone, the demand of the Kansas Pacific, strictly speaking, means this: that the lowest through rate of the Union Pacific from Omaha to Ogden, a distance of 1,032 miles, shall be equally apportioned, mile for mile, over the entire distance from Kansas City to Ogden, a distance of 1,261 miles, or 229 miles greater than from Omaha to Ogden. This would compel the

Union Pacific to carry the business of the Kansas Pacific between Cheyenne and Ogden for a less sum per mile than it would receive on its own business east of that point. A simple calculation will show that by this rule, while on its own first-class passengers the Union Pacific would receive, say, five cents per mile east of Cheyenne, for the same passenger brought to it by the Kansas Pacific it would receive four cents per mile west of Cheyenne, thus forcing upon the Union Pacific a gross discrimination against itself in favor of the Kansas Pacific. This construction of the phrase, according to its literal significance, is too obscure to deserve further consideration.

The section under consideration must be construed with reference to the practices and usages and recognized modes of business in vogue in railroad management at the time the act was passed. I assert, as a fact not susceptible of refutation, that the absolute obligation to "pro rate," either in its literal signification or in the sense ascribed to it by our antagonists, according to distance, is a thing unknown in railroad management. The apportionment of rates upon no two roads in the United States is made on that basis, except as it is indicated and justified by the character of the roads. Allowance is universally made for difference in grades, difference in curvature, difference in local or through business, cost of fuel and water and labor, and the numerous elements which enter into the cost of maintenance and operation of railroads. Nor can it be otherwise, until some process is discovered to equalize what nature has made unequal—to convert mountains into plains, to make crookedness straight, or in some miraculous manner obliterate the inequalities inherent in different works of the Creator.

The phrase "pro rate," then, not being found in the law—not recognized or applied in actual business—and leading to outrageous discriminations against the Union Pacific, is not to be incorporated into the statute, except by clear and emphatic words, irresistibly leading to that result. Notwithstanding, it has been repeatedly and often *assumed* that we are required to pro-rate with the Kansas Pacific, but *never argued*, we insist that mere *iteration* and *reiteration* does not impose upon us that obligation, but that such a duty must be derived from *the language of the statute alone*.

Turning, then, to the statute, it is manifest from its language that *it declares the rule of non-discrimination only. In the sense most unfavorable to us it prohibits discrimination against the branches, or either of them, in respect to rates, time, and transportation, even in favor of the main trunk, viz., the Union Pacific.* No other rule can possibly be derived from the language used, and the question thus reduces itself to the simple inquiry, Will the apportionment of the through rate claimed by the Kansas Pacific operate as and result in a discrimination against the Union Pacific and in favor of the Kansas Pacific? If so, it is as completely within the inhibition of the statute as if against the latter company and in favor of the former. It has been said that in construing a statute its words must be given their ordinary and obvious import without regard to the results involved; but this is only measurably true. Where a literal construction involves consequences palpably not designed by the legislative power, or when, as in this case, the effect, the result, the consequence—viz., discrimination or non-discrimination—is made the actual and absolute test of construction, the rule invoked has no application. Whatever may be the true construction of the statute under consideration, any construction which can be demonstrated to establish a rule which would necessarily inflict gross, palpable, and destructive discrimination upon the Union Pacific must be not only rejected, but outlawed, as unworthy of serious consideration.

CHARACTER OF UNION PACIFIC WEST OF CHEYENNE.

Assuming, then, what is a recognized fact of railroad management, that the cost of operating and maintaining a railroad depends upon grades, curvature, fuel and water supply, climate, remoteness from base of supplies and material, and other elements not necessary to mention, and bearing in mind that the rate of fare and freight claimed by the Kansas Pacific is a mile age rate of the lowest through competing rate from Omaha to Ogden, I call attention to the following indisputable facts, showing beyond controversy that nearly, if not quite two-thirds, of that rate is earned on the west half of the Union Pacific, viz., that portion traversed by the business of the Kansas Pacific.

The east half of the road is built through the Platte Valley and the Lodge Pole Valley, along a level plain, without curvature, and at a gradual and regular ascent of about ten feet per mile. The western half crosses three ranges of mountains—the Rocky Mountain range, the Black Hills range, and the Watsatch range, and encounters the manifold difficulties of operation and maintenance incident to a mountainous, remote, uninhabited, storm-swept country. The character of the two divisions of the road is best shown by the following facts, shown by the map before you, marked “Schedule B.” The aggregate curvature east of Cheyenne is 2,504 degrees; west of Cheyenne, 21,080 degrees. Maximum grades per mile, east of Cheyenne, thirty-five feet per mile; west of Cheyenne, ninety feet per mile. Capacity of standard engine, east of Cheyenne, 22 cars; west of Cheyenne, 9 cars. Proportion of engine expenses to total operating expenses, east of Cheyenne, 32 per cent.; west of Cheyenne, 51 per cent. Total operating expenses per train per mile, east of Cheyenne, 87 cents; west of Cheyenne, \$1.34. It is a fact conceded by civil engineers that each 21 feet of ascending grade costs as much in operation as one mile of level road, and that 527° of curvature involves an expenditure equal to one mile of straight level road. The total ascent from Omaha to Cheyenne, westward, is 5,454 feet, equal to 260 miles of added level road. The total ascent from Cheyenne to Omaha, eastward, is 379 feet, equal to 18 miles of added level road. The total curvature is 2,504°, equal to 5 miles of added level road, making the additional road arising from grade and curvature equal to 283 miles. The total ascent from Cheyenne to Ogden, westward, equals 6,622 feet, equal to 315 miles of added road. From Ogden to Cheyenne, eastward, the total ascent is 8,279 feet, equal to 394 miles of added road. The total curvature is 21,180°, equal to 40 miles of added road. The entire additional road arising from grade and curvature equals 749 miles, which gives an excess of actual distance arising from grades and curvatures, between Cheyenne and Ogden over between Omaha and Cheyenne, of 466 miles. A very simple calculation, based on these facts, will demonstrate the mathematical and absolutely correct result, that, of the through rate from Omaha to Ogden, *more than two-thirds*

is earned between Cheyenne and Ogden, and that to divide that rate equally at Cheyenne would leave the west half of the road not only without profit, but with an absolute loss. Yet this is the exact demand of the Kansas Pacific.

HOW THE RULE DEMANDED BY THE KANSAS PACIFIC WILL DISCRIMINATE AGAINST THE UNION PACIFIC.

The following are fair illustrations of the practical effect of the construction contended for. The through rate on a car load of merchandise is \$100. Of this amount \$60 is earned west of Cheyenne and \$40 east, and the profit of the carriage is \$10 west and \$10 east. The Kansas Pacific demands that its business be carried over the west half of the road at one-half the through rate, \$50, which is simply *the cost of carriage*, while it receives \$10 more on the same business east of Cheyenne than the Union Pacific. Suppose it reduces its rate \$10, as it may do, and still receive the Union Pacific rate. This reduction will take the business, unless met by the Union Pacific. To meet it a reduction of \$10 on the through rate is made, one-half of which, \$5, applies to the west half of the road, making one-half the through rate \$45, at which rate the Kansas Pacific insists its business must be transported under its rule, or in other words, at \$5 less than the cost of carriage. It is easy to see that successive reductions must increase this loss, until in self-defence the through rate, which is determined by the competition of the Pacific Mail Steamship Company, must be abolished, and the intercontinental business given up, except upon a limited amount of light and costly freight, thus endangering the solvency and existence itself of the chief member of the Pacific railroad system.

Or take another illustration: the cost of carriage of a passenger being east of Cheyenne 3 cents per mile, and west of Cheyenne 5 cents per mile, the through rate is fixed at an average of 4 cents per mile, being 1 cent less than the cost of carriage over that portion of the road traversed by Kansas Pacific passengers, while giving that company 1 cent per mile more east of Cheyenne than received by the Union Pacific, thus enabling it to further cut *its* rate, to which the Union Pacific must respond by cutting its *through rate*, one-half of which

enures to the benefit of the Kansas Pacific, thus enabling it to continue the process to the destruction of the Union Pacific, thus inflicting the grossest discrimination.

Again, the through rate from Omaha or Kansas City to Ogden per car-load of merchandise, say :

	<i>Cost of transportation.</i>	<i>Profit.</i>
\$100....	\$80 00	\$20 00

sixty per cent. of the cost of carriage from Omaha to Ogden is incurred west of Cheyenne, or \$48.00.

Now, suppose the Kansas Pacific, which is left free as to rates, should cut the through rate to \$90, it would follow—if the Union Pacific meets that rate—that but half the through rate could be charged west of Cheyenne, or \$45.00, which is \$3 less than the cost of hauling—a loss of that amount.

Take the emigrant rate of \$45 from Omaha to San Francisco, with uniform rate from Kansas City to San Francisco, and apply the Kansas Pacific *pro rata* basis of divisions to such rate, and we have as the result \$17.25 earned by Kansas Pacific between Kansas City and Cheyenne, while the Union Pacific will get but \$7.05 for the haul from Cheyenne to Ogden over its mountain division.

Fifty-four per cent. of \$45 earned east of Ogden, or \$24.30. Now, if the Union Pacific competes from Kansas City, it must first pay \$10.20 to get its passenger to Omaha, which leaves it through rate to Ogden \$14.10—

Of which the Kansas Pacific must pay the Union Pacific

one-half, or	\$7 05
Which leaves the Kansas Pacific's proportion.....	17 25
	<hr/>
	\$24 30

Ogden to Cheyenne, \$50. Cheyenne to Omaha, \$50.

Cheyenne to Kansas City, \$50.

If the \$100 through rate be cut by Kansas Pacific \$10, and Union Pacific follows, this is the result :

45.	45 U. P.
	40 K. P.
45	45
45 U. P. to Ogden.	40 K. P. to Ogden.
<hr/>	<hr/>
\$90	\$85

This still leaves the Union Pacific through rate \$5 above the Kansas Pacific. To meet this the Union Pacific reduces to \$85, with this result:

\$42 50	\$42 50 U. P.
	\$40 K. P.
\$42 50	\$42 50
42 50 U. P.	40 00 K. P.
<hr/>	<hr/>
\$85 00	\$82 50

Kansas Pacific is still \$2.50 below the Union Pacific *without itself cutting rates further*.

The effect of the construction demanded is best illustrated, perhaps, by the following plain statement:

A standard engine starts from Omaha and hauls to Cheyenne 22 loaded cars. At Cheyenne it must either drop 13 of these cars and make two trips to haul its train to Ogden, or take on an additional engine of increased power, with the manifold increased expenses, to get its train to Ogden. It is obvious the expense must be nearly twice as great west as east of Cheyenne. Yet the Kansas Pacific, having the same number of cars at Cheyenne, insists that it shall be hauled to Ogden at the same cost as from Omaha to Cheyenne. This is the length and breadth of their demand, simply stated.

The discriminating and destructive operation of the rule contended for against the Union Pacific, as well as the falsehood of the alleged discriminations against the Kansas Pacific, is further strikingly set forth in the following letter, the importance of which justifies its incorporation with the body of this statement:

OMAHA, December 13, 1874.

A. J. POPPLETON, Esq.,
Washington, D. C.:

DEAR SIR: I desire briefly to direct your attention to certain charges of discrimination in Union Pacific passenger rates between Omaha and Ogden and Cheyenne and Ogden, against passengers from Missouri, Kansas, Colorado, etc., made by the press and certain memorialists of St. Louis, and notably in the speech of the Hon. J. B. Chaffee, of Colorado, delivered in the United States Senate, on the thirteenth of last month. Mr. Chaffee says:

"By refusing to pro-rate and give equal advantages to the

"branch lines, as required by the act of incorporation, all that part of the country north or south of a direct railroad connection with the eastern terminus of the main line is compelled to make connection at Omaha, for the tariff rates for *passengers and freight are more from any point west of Omaha, at the point of connection of any branch, than from Omaha to Ogden.*"

"These unjust, illegal, and prohibitory discriminations are very severely felt by the people of Colorado, Kansas, Missouri, and all States south of the Ohio river."

I am at loss to conjecture from what sources the honorable gentleman obtained information on which to base these statements. Our official passenger rates now in force have been published and in the hands of connecting railroad companies and the public since 1872, and I defy him or any one else to show a single instance in which we have charged a higher passenger rate from any point west of Omaha to Ogden than from Omaha to the same destination.

Passenger rates from Kansas City, the eastern terminus of the Kansas Pacific Railroad, to the western terminus of the Union Pacific Railroad, (Ogden,) and to all points west thereof to which rates are based on local tariffs, have always been made by way of Omaha, it being twenty-five miles the shorter route, and the sum of such tariffs being less through Omaha than through Denver from Kansas City to Cheyenne—the common point to both roads.

These rates are applied without discrimination in all the territory referred to by Mr. Chaffee, and are divided between the lines in interest as follows:

<i>Via Omaha.</i>	<i>1st Class.</i>	<i>2d Class.</i>	<i>Emigrant.</i>
Kansas City to Omaha.....	\$10 50	\$10 50	\$10 00
Omaha to Cheyenne.....	31 00	24 00	15 00
Cheyenne to Ogden.....	46 50	36 00	25 00
Through rates.....	\$88 00	\$70 50	\$50 00
<i>Via Denver.</i>	<i>1st Class.</i>	<i>2d Class.</i>	<i>Emigrant.</i>
Kansas City to Cheyenne.....	\$41 50	\$34 50	\$25 00
Cheyenne to Ogden.....	46 50	36 00	25 00
Through rates.....	\$88 00	\$70 50	\$50 00

Observe that the rates are the same by both routes, and that the passenger who pays his fare from Kansas City to Cheyenne by either the Union Pacific or Kansas Pacific line, and pays again from that point to Ogden, gets his passage at the same cost, regardless of the route by which he reached Cheyenne, as

if he had purchased a through ticket from Kansas City to Ogden. These rates neither discriminate against the Kansas Pacific, the public, nor the Government. But if we apply to this same passenger business the rule for dividing rates between the Kansas Pacific and Union Pacific contended for by the former in Congress and in court, namely, *a mileage pro rata between Cheyenne and Ogden of the lowest through rate between Omaha and Ogden*, it will give the following discriminating results against the Union Pacific and in favor of the Kansas Pacific:

<i>Kansas City to Ogden, via Denver.</i>	<i>1st Class.</i>	<i>2d Class.</i>	<i>Emigrant.</i>
Kansas City to Cheyenne, K. P. proportion.....	\$68 56	\$51 60	\$40 50
Cheyenne to Ogden, U. P. proportion.....	19 44	18 90	9 45
Through rates.....	\$88 00	\$70 50	\$50 00

To further illustrate the absurdity as well as the rank and ruinous discrimination against the Union Pacific Company which the *pro rata* demands of the Kansas Pacific involve, let me again ask your attention to the division of rates which would follow the enforcement of such demands. Take for example existing rates of all classes from St. Louis to San Francisco, *via* Omaha, which are now divided thus:

	<i>1st Class.</i>	<i>2d Class.</i>	<i>Emigrant.</i>
St. Louis to Omaha.....	\$16 00	\$13 00	\$10 50
Omaha to Ogden.....	54 00	40 50	24 30
Ogden to San Francisco.....	46 00	34 50	20 70
Through rates.....	\$116 00	\$88 00	\$55 50

Now apply the mileage *pro rata* rule, before referred to, in dividing these rates from St. Louis to San Francisco by the Kansas Pacific route, and it will result thus:

	<i>1st Class.</i>	<i>2d Class.</i>	<i>Emigrant.</i>
St. Louis to Kansas City.....	\$11 00	\$9 00	\$9 00
Kansas City to Cheyenne, K. P. proportion.....	52 44	27 90	20 95
Cheyenne to Ogden, U. P. proportion.....	19 44	18 90	9 45
Ogden to San Francisco, C. P. ".....	33 12	32 20	16 10
	\$116 00	\$88 00	\$55 50

Similar comparison of passenger rates and divisions might be made from nearly all principal points in the country with corresponding results, but I think the foregoing are sufficient to demonstrate the iniquity of the Kansas Pacific Company's "discriminating" *pro rata* claims. As you are well aware, it

is these unjust demands of the latter company which have always barred the way in every attempt to harmonize the relations of the two roads. There are other statements as to passenger matters in the Colorado Senator's speech which are incorrect in point of fact, and other statements of fact which are erroneous in their application, but I have not time now to further refer to them.

Yours, truly,

THOS. L. KIMBALL,

Gen'l Passenger and Ticket Agent, U. P. R.R.

It is difficult to understand how sane men can seriously claim that a prohibition upon the Union Pacific not to discriminate against the Kansas Pacific gives that company the right to have its freight and passengers hauled over that portion of the Union Pacific which the Government itself has recognized as most difficult of construction, maintenance, and operation, at an actual loss. A claim that we should make a fixed annual contribution to the treasury of the Kansas Pacific would be equally just, equally well founded in the law, and would have the merit of intelligibility and frankness. The truth is that this outrageous demand originates in a desperate effort to escape from the consequences of an organic infirmity of their road. The distance from Kansas City to Cheyenne exceeding that from Omaha to Cheyenne by 229 miles, and the line being of an inferior character, it never can compete with the Union Pacific or share in any considerable degree in the through business, unless by some legislative device its inferiority can be made a burden upon the Union Pacific by compelling that company to make good the deficiency in its natural earnings and resources.

LEGAL RELATION OF THE KANSAS PACIFIC TO THE UNION PACIFIC.

But we deny that the Kansas Pacific, as built, is a branch of the Union Pacific, in any such sense as to entitle it to share the benefits of section 15, act 1864, as against the main trunk of the latter road.

The act of July 1, 1862, which originated the system of Pacific railroads, authorized a *trunk* road from a point on the 100th meridian westward to the eastern boundary of California. From that point eastward to the Missouri river, at such point

as might be designated by the President, it authorized a branch *to be built by the Union Pacific Company*. The same section authorized and required the same company to construct a branch from Sioux City to connect with the Union Pacific at a point not farther west than the 100th meridian. We have, then, by this act a single *trunk* road, beginning at the 100th meridian, and extending eastward from the 100th meridian to Sioux City, Omaha, and Kansas City respectively.

Stopping for a moment here, what would have been the construction of the sections out of which this controversy springs if the roads had been built as required by the act of 1862? The Kansas Pacific claims that the Union Pacific discriminates against it by taking upon its main trunk a better rate than it allows the Kansas Pacific. No such question could have arisen under the act of 1862, for the reason that no parallel road which could be in effect a rival to the main trunk was authorized. The question of discrimination in favor of the trunk line as against a branch could not have arisen. The broadest construction which could have been maintained would have been that the trunk line should not discriminate against either of the branches in favor of the other, but should treat all alike in connections, time, and tariffs. All the branches would have been feeders of the main trunk and none of them rivals to it or any part of it. The claim of the Kansas Pacific is that having been *authorized*, not *required*, to connect its road with the Union Pacific at a point 270 miles west of its eastern terminus, on the 100th meridian, it may claim not only equal advantages and facilities with the branches, but with the main trunk. Is it credible that Congress—the United States having a direct pecuniary interest of \$27,000,000 and only \$6,000,000 in the Kansas Pacific—intended to place the former company where it could be gradually but effectually destroyed, by being compelled to carry the business received from and delivered to the Kansas Pacific at a loss? No such result could spring from the act of 1862, and if such obligations are to be established, they must be derived from subsequent legislation.

By section 9, act 1864, the Kansas Pacific was authorized to connect its road with the Union Pacific, at any point west of the initial point on the 100th meridian; but in making such de-

parture it was expressly provided that it should be "subject to all the conditions and restrictions of this act." One of these conditions was that it should designate its route and file a map thereof within three years from the passage of the act of 1862. This it failed to do, and thereby lost the right to diverge from its original route, and elected to build to the 100th meridian. By this failure it forfeited the right and power to make its connection with the Union Pacific at any other point than the 100th meridian, and to any advantages and facilities beyond those accruing from a connection at the 100th meridian. This was held by the Secretary of the Interior in *Kansas Pacific Railway vs. Union Pacific Railway*, (southern branch :) "The company, after the passage of the act of 1864, had its option to go to the 100th meridian or to the west of that meridian. It could not do both. It was obliged to elect within the three years. It did so, and elected to go to the 100th meridian. Having done so, it was, as to this subject, *functus officio*. It could not, therefore, change its route without the consent of Congress."

Whatever rights and powers the Kansas Pacific possesses in respect to the interchange of business with the Union Pacific at Cheyenne it must derive from subsequent legislation of Congress, *not accepted by the latter company*.

But three subsequent acts of Congress, viz., the act of July 3, 1866, (14 Stat., p. 79 :) March 3, 1869, (15 Stat., 324 :) June 20, 1874, none of which have been accepted by the Union Pacific, touch this question. The first is silent upon the subject of this controversy. The second is relied upon as conferring the rights claimed in the second section by the following language: "All the provisions of law for the operation of the Union Pacific Railroad, its branches and connections, as a continuous line, without discrimination, shall apply the same as if the road from Denver to Cheyenne had been constructed by the Union Pacific Railway Company, eastern division; but nothing herein shall authorize the said eastern division to operate the road or fix the rates of tariff for the Denver Pacific."

This section, in express language, enjoins upon the Union Pacific compliance only with that portion of sections 12 and 15 which requires operation as a "continuous line," conceding to

the Denver Pacific the power to operate its road in its own way and to fix its own tariffs. As the act of 1874 does not take away this right, it is manifest that there can be no reciprocity in the obligations sought to be imposed on us. The utmost, then, that can be claimed, is, that we should receive and forward the business of those two roads on the same terms as the business of the other branches. So far as any obligation to receive and forward their business on the same terms and conditions as the business of the main trunk is concerned, this legislation fails to connect the roads on the terms of mutual tariffs and operation. The Denver Pacific has unlimited control of its own road and tariffs. Neither the Union Pacific nor Kansas Pacific can dictate its operation or its tariffs. The connection is broken. The Kansas Pacific has not connected itself with the Union Pacific. It is neither a branch nor connection of the Union Pacific, and can only reach it over the Denver Pacific, which is a territorial corporation, not created by Congress, and to which is expressly conceded, by act of Congress, exclusive control of its own operation and tariffs.

But it has been said we accepted the act of 1864, the ninth section of which authorized a connection west of the 100th meridian. While this may be true, though formal acceptance was never made, it has been shown that the Kansas Pacific failed to make its connection under that act and elected to connect at the 100th meridian. This present connection is made solely by authority of the acts of July 3, 1866, and March 3, 1869, the provisions of none of which has the Union Pacific Company accepted, expressly or by necessary implication. The act of June 20, 1874, which contains a legislative declaration that the Denver Pacific shall be deemed and taken to be part of the Kansas Pacific, is of the same character. All are sought to be imposed upon the Union Pacific without its assent, and if so construed as to impair and diminish the value of the property invested under its franchise, under late decisions of the Supreme Court they are clearly void. We say, then, we have never consented that the Kansas Pacific should be set up as a rival parallel trunk road, to compete for the business of our trunk line, much less to shut us off from competition with it. That its rights in respect to the interchange of business are no

greater than if it had built its road to the 100th meridian, as it elected to do under the act of 1864, by failing to comply with the necessary conditions to enable it to do otherwise. *That is to say, we are required to receive and forward its business upon as favorable terms as we receive that of other branches—no more, no less. We are not required to erect it into a rival of the trunk line, by giving it advantages not taken for or enjoyed by ourselves.*

UNION PACIFIC NOT GUILTY OF VIOLATING THE PROVISIONS OF ITS CHARTER.

We therefore respectfully insist that we violate no provision of the statutes by which we are governed, *so long as we extend to the Kansas Pacific the same facilities in respect to rates, time, and transportation as are extended to the other branches.*

Or taking the extreme view of that company, that we cannot discriminate in our own favor as against them and are not required to discriminate in their favor against ourselves, we are guilty of no violation of the law so long as we *impose on their business west of Cheyenne only such a rate as equals that proportion of our through rate earned west of Cheyenne, which must be greater than the amount earned east of Cheyenne by reason of the greater cost and expense of constructing, maintaining, and operating the west half of the road. This may be demonstrated to be not less than two-thirds the through rate.*

IS THERE AN ADEQUATE LEGAL REMEDY FOR ALLEGED VIOLATIONS?

The acts charged against the Union Pacific are, if true, violations of the law to the injury and damage of the Kansas Pacific Railway Company. That *it* holds an adequate legal remedy for all such breaches of its rights seems too plain to call for discussion. Congress, mainly at the instance of that company, has singled out the Union Pacific, and aimed at it remedial and penal statutes not authorized against any other corporation in existence. They have framed statutes to meet the precise difficulties complained of. Congress has enacted them; and yet that company is still at the doors of the national legislature, clamoring for further, and, as they think, more stringent legislation. Yet they have availed themselves of none already

enacted. The act of March 3, 1873, providing among other things, that "the proper circuit court of the United States shall have jurisdiction to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law," was passed at their request, has been successfully invoked in another instance, has received a judicial construction by the court of last resort, and the power of any private person to institute the proceedings on behalf of the public fully sustained. There is a plain, summary, and adequate remedy provided to meet the exact case.

The statute of June 20, 1874, highly penal in its character, was enacted in the same way, framed by the Kansas Pacific, aimed at the Union Pacific, and passed at its instance; but none of its provisions invoked, notwithstanding the lapse of three years' time.

But we insist that the Kansas Pacific Company, at least, is estopped from asserting that any impediment exists to an enforcement of the law on its behalf. On the 29th of September, 1874, the two companies entered into a written agreement, fixing the division of rates on business interchanged at Cheyenne, and providing among other things that said agreement should not be in prejudice of the legal rights of either party, but that "*the legal rights and status of the respective companies shall be the subject of an amicable legal adjudication.*" On the same day the president of that company, in a letter to the president of the Union Pacific Company, said: "I will at once place a copy of the same (the agreement) in possession of the general solicitor of this company, with instructions to confer with the proper officer of your company, who, I trust, will be instructed by you to expedite the adjudication in conformity with the agreement." A copy of the contract and letter is appended, marked "Exhibit B." In pursuance of this agreement, on the 21st of January, 1875, a bill in equity was filed by that company and the Denver Pacific Railway & Telegraph Company in the circuit court of the United States for the district of Nebraska, praying an injunction against the Union Pacific Company, restraining it from continuing its alleged discriminations. An answer to the merits was filed March 15, 1875. No replication was filed to this answer, and thus the matter rested until May 9, 1877—

more than two years—when exceptions to certain portions of the answer were filed. There was no reason for this delay, except the failure of the Kansas Pacific to press the suit by excepting at once, setting the case for hearing on bill and answer, or replying and proceeding to proof. The exceptions filed raise two questions: first, whether the Kansas Pacific and Denver Pacific constitute a branch of the Union Pacific; second, is the imposition of an increased rate on the Kansas Pacific west of Cheyenne, based solely on the increased cost of construction, maintenance, and operation of that part of the road, a discrimination against the Kansas Pacific? These questions were fully and elaborately argued on both sides on the 15th of November, submitted to the court, and are now under advisement—all of which fully appears from a certified transcript of said cause herewith filed, and marked "Schedule A." It is respectfully submitted that it does not lie in the mouth of the Kansas Pacific to complain of a lack of remedies to redress its alleged wrongs. That so far as it is concerned, no impediments exist to a complete, speedy, summary, and adequate vindication of its rights, and that by its own action it is estopped from making that complaint.

THE ALLEGED GREIVANCE A PRIVATE ONE.

The complaint of the Kansas Pacific is of a private injury alone. It has no warrant, if it was so inclined, to assume a protectorate of the public interest. Its charge is that we do not make a fair division of rates; that they are so unfair as to become unlawful. The public makes no specific complaint. The Government and the public find transportation over the Union Pacific and Central Pacific roads at the lowest competing rates—rates not determined by considerations local to the road, but by the competition of the Pacific Mail Steamship Company. But as that transportation is not over the Kansas Pacific, that fact decreases their earnings. In other words, the Government and the public get its transportation, but the treasury of the Kansas Pacific remains empty. The claim is that we must divide the through business with that company by carrying a part of it west of Cheyenne at a loss, for

its benefit. The evident purpose of the Pacific railroad acts, as developed from every line and section thereof, was to create a single *trunk through* line, with short branches at either end for the convenience of particular localities. The Government and general public would have been as well served if no branches had existed. No subsidies were granted the branches west of the 100th meridian, and this marks the line of the interest of the Government and the public in them. It was not intended to set up rivals to compete for the through business of the main trunk, thus jeopardizing the immense loans made to the trunk companies. To do this was in contravention of the manifest policy of the Government, and necessarily endangered the repayment of its loans by making it impossible for its debtors to repay them out of a divided business. No financier loans money to a debtor who, he knows, has not the ability to pay his debts, and to impute to Congress the purpose of embarking vast loans in the trunk companies, and incorporating into such loans provisions rendering payment impossible, is to stultify the national Government. The assertion may be safely ventured that, if the construction contended for by the Kansas Pacific prevails, the power of making through rates will pass into the hands of the Kansas Pacific, and the only alternative of the trunk lines will be to abandon through business and make a struggle for existence on local business alone. A departure from the policy of the original act in respect to the trunk lines will threaten them with bankruptcy, and render the ultimate repayment of their large subsidies extremely doubtful. It is difficult to conceive that the Government can be guilty of the immeasurable folly of destroying the capacity of its largest debtors to pay their debts.

THE UNION PACIFIC NOT THE CAUSE OF THE KANSAS PACIFIC'S BANKRUPTCY.

The statement persistently made and industriously circulated by the first-mortgage bondholders, that failure of the Union Pacific Company to comply with its lawful obligations is the cause of the bankruptcy of the Kansas Pacific, is finally repeated in the late annual report of the Secretary of the Interior, in which (page 36) he says :

“In a printed paper addressed to me on the 21st of April last by the chairman and secretary of a committee of nine first-mortgage bondholders, it is alleged that said failure to pay interest was mainly due to the fact that the Union Pacific Railroad Company has persistently refused to transport passengers and freight in connection with the Kansas Pacific and Denver Pacific Companies on the terms and in the manner required by the acts of 1st July, 1862, 2d July, 1864, 3d March, 1869, and 20th June, 1874.”

This is in flat conflict with the representations of the officers of that company repeatedly made, both publicly and privately. In a circular addressed to the holders of the land-grant bonds of the Kansas Pacific Company by Adolphus Meyer, late president of that company, under date of November 2, 1876, he says:

“The Kansas Pacific Railway Company having been compelled to default on the interest-coupons of their first-mortgage bonds, *owing to the nonpayment of a large sum of money due said company by Government for the transportation of mails, troops, supplies, &c., (notwithstanding the decision of the Supreme Court of the United States that such claims should be paid,) and also a falling off in business caused by the general depression of commercial affairs, and farther, the competition of a new railroad,* I deem it my duty to land-grant bondholders to place before them some information on the present state of the land-grant under my charge as trustee.”

And on the 14th of October, 1876, the same person, not yet having resigned the office of president of the Kansas Pacific Company, in his official capacity addressed to the Secretary of the Treasury a letter, in which, in bitter, indignant, and scathing terms he arraigns the Government as the cause of the bankruptcy of his company, and denounces its treatment in unmeasured language. A complete copy of this letter is hereto appended, marked “Exhibit C,” and its careful perusal is commended to all who would attribute the woes of the Kansas Pacific to the Union Pacific Company.

As illustrating the increased cost of operating the mountain divisions of a railroad, I append Exhibit D, being an extract from a report made by a committee of the General Assembly of California. The facts and statements of this extract apply with

equal force to the mountain division of the Union Pacific. I also append Exhibit E, being letter of General Freight Agent of the Union Pacific, showing comparative rates per mile on the two roads upon the different classes of freights.

It is therefore respectfully but confidently submitted that in view of the foregoing facts and reasons the following are fair and conclusive answers to the points made against the Union Pacific Company, and that it is shown beyond controversy that no legal impediments exist to the enforcement of any public or private duty or obligation of that company :

First. The Union Pacific Company has always been ready, and is now ready, to make rates which shall not discriminate against the Kansas Pacific, but it cannot pro-rate mile for mile on the basis of its lowest *through* rate from Omaha to Ogden, as demanded by the Kansas Pacific, because of the increased cost and expense of building, maintaining, and operating the west half of its road—that part between Cheyenne and Ogden.

Second. The Government loaned on the west half three times the subsidy loaned on the east half, on account of the greater cost of construction over the Black Hills, the Rocky Mountains, and the Wasatch Mountains. The west half cost *three* times as much in construction, and costs *twice* as much in maintenance and operation as the east half.

Third. More than *two-thirds* of the through rate from Omaha to Ogden is *earned* on the west half of the Union Pacific, but it has offered and now offers to divide the through rate with the Kansas Pacific on that basis. That company refuses the offer, and demands *one-half* of the through rate, or a *pro rata* mile for mile, which is *more than half* the through rate.

Fourth. The law, if applicable at all in favor of the Kansas Pacific, (which the Union Pacific denies,) simply declares the rule of *non-discrimination*. One-half the through rate, or a *pro rata* mile for mile, would be *gross discrimination against the Union Pacific*.

Fifth. Until it can be demonstrated that a railroad with

mountain grades and curves can be built and operated as cheaply as a straight and level road *of equal length*, it is not only against law, but *unjust, inequitable, and contrary to all business precedent and usage*, to require the Union Pacific to make with the Kansas Pacific an equal division of its lowest through rate, or to *pro ratu* mile for mile.

Sixth. The Government holds a second mortgage on the Union Pacific for \$27,000,000, and accrued unpaid interest, loaned in aid of its construction. Its lien on the Kansas Pacific for like subsidies and accrued unpaid interest is \$6,300,000. Can it afford to jeopardize the greater sum by arming the Kansas Pacific with power to compel the Union Pacific to carry freight and passengers at a loss?

Seventh. The Union Pacific is not responsible for the bankruptcy of the Kansas Pacific. The officers of that company ascribe its bankruptcy *to its treatment by the United States and the competition of a rival parallel railroad*, viz., the Atchison, Topeka and Santa Fé Railroad, which, it is well known, has obtained most of the business of Colorado and New Mexico.

Finally. *The duty and obligation of the Union Pacific Company is a question of law.* For any breach thereof the fourth section of the act of March 3, 1873, affords, and was passed to afford, *a summary remedy by mandamus.* The act of June 20, 1874, affords a cumulative remedy, *by punishing violations by fine and imprisonment, and imposing treble damages.* Why do they not go to the *courts* rather than to Congress for a *construction* of the law? An amicable suit, instituted by agreement of parties, presenting clearly and sharply the vital questions dividing the two companies, has been argued and submitted, and is now under advisement for speedy decision. *Is not the Kansas Pacific Company estopped from denying that it has a plain, adequate, and summary remedy of its own choice and selection?*

All of which is respectfully submitted.

A. J. POPPLETON,
Gen'l Att'y U. P. R.R. Co.

EXHIBITS.

"EXHIBIT A."

UNION PACIFIC RAILROAD CO., GENERAL FREIGHT DEPARTMENT,
OMAHA, *January 1, 1872.*

Special Orders No. 4.

Hereafter the rates upon freight between any two local stations upon the line of this road will not exceed the rates between Omaha and the most westerly of the two stations in question, as given in local tariffs dated June 1, 1870, and August 7, 1871. Should the rates, as given in the printed tariffs, in any case exceed these, agents will use the Omaha rates in billing, and note the words "Omaha Rate" upon the way-bill, as explanation.

For instance, the rate upon grain in car-load lots, between Fremont and Bryan, as given in tariff, dated April 4, 1870, is \$2.30 per 100 pounds, but as the rate between Omaha and Bryan, as given in tariff dated June 1, 1870, is but \$1.72, the \$1.72 rate will be used in billing from Fremont to Bryan, the explanation being given upon way-bill that "Omaha Rate" is used.

E. P. VINING,
Gen'l Freight Agent.

Approved :

T. E. SICKLES,
General Supt.

"EXHIBIT B."

NEW YORK, *August 3, 1874.*

ROBT. E. CARR, Esq.,
Prest. Kansas Pacific R. R. Co., St. Louis, Mo. :

DEAR SIR: The Executive Committee of the U. P. R. R. Co. has received and duly considered the proposition for an interchange of business at Cheyenne between the Denver Pacific and the Union Pacific railroads, which was handed to Mr. Sickels at St. Louis on the 17th instant, by Prest. Robert E. Carr, on behalf of the K. P. R. R. Co.

Actuated by the strongest desire to comply to the fullest extent with all legal obligations imposed on this company, and at the same time aiming to afford to the public the largest amount

of accommodation consistent with a due regard for the protection of the interests of the Government in this road, and of the interest of the holders of the securities of this company, the Executive Committee is compelled to decline assent to the proposition referred to as a whole, but respectfully submits the following proposition, which is regarded by the committee to be more favorable to the Kansas Pacific R. R. Co. than either the legal obligations imposed on this company or a strict compliance with the practice of railroads interchanging business would require.

1. The companies agree to receive from and give to each other with promptness and despatch all freights, passengers and express goods and mails going to and coming from their respective lines, and to give the same facilities and accommodation to all such business as they do to business on their own line, providing for passengers good and sufficient room both in coaches and Pullman sleeping-cars when required.

2. The Union Pacific Company to receive for the transportation of passengers and freight between Cheyenne and Ogden going over the Denver Pacific and Kansas Pacific Railroads six-tenths of its through rate established from time to time by the Union Pacific Company on like freight and passengers passing between the same or corresponding points.

3. On all business between Omaha and Colorado, passing wholly or in part over the Denver Pacific railroad, the rate to be divided between the two roads *pro rata* per mile as made up, and in making up the mileage each mile of the Union Pacific to be taken and considered as one mile, and each mile of the Denver Pacific as one mile and six-tenths of a mile. Should the foregoing proposition be accepted by your company, it is respectfully suggested that details may be prepared by the transportation officers of the two companies, and when approved they may be embodied in a formal contract.

Very truly yours,

SIDNEY DILLON,
President.

DENVER, *September 29, 1874:*

The above proposition of Mr. Dillon for a settlement of the division of business between the Union and Kansas Pacific railroads is accepted by the respective companies, and is considered as binding from this date; it being further stipulated and agreed that the legal rights and status of the respective companies shall be the subject of an amicable legal adjudica-

tion, the foregoing arrangement to be binding on the respective companies until such legal adjudication shall be had.

SIDNEY DILLON,
President U. P. R.R. Co.
ROBERT E. CARR,
President K. P. R.R. Co.

KANSAS CITY, *September 29, 1874.*

SIDNEY DILLON, Esq.,
President:

DEAR SIR: Referring to the agreement made this day respecting the adjudication of matters in dispute between the Union Pacific Railroad Company and the Kansas Pacific Railway Company, I will at once place a copy of the same in possession of the general solicitor of this company, with instructions to confer with the proper officer of your company, who I trust will be instructed by you to expedite the adjudication in conformity with the agreement.

Very respectfully,

ROBERT E. CARR,
President.

"EXHIBIT C."

KANSAS PACIFIC RAILWAY COMPANY,
PRESIDENT'S OFFICE, ST. LOUIS, *October 14th, 1876.*

SIR: The directors of this company, after consultation, have concluded that the condition and necessities of the company should be made known to you, and through you to the president, to the end that, if you shall find it to be in your power to pay for the United States the moneys due to this company, you will do so, and thus relieve the company from impending forfeitures.

Three years ago the United States suspended payment to the company for services provided to be performed by the several acts of Congress. The want of the money compelled the company to ask indulgence of its bondholders for a time with the hope that the Government would not long maintain its attitude of non-payment. A large majority of the bondholders consented; some did not, and have brought suit. On the first of November next a large payment will be due for interest on the first-mortgage bonds. Heretofore, in emergencies of this kind, the directors have been enabled to borrow money, partly on their own credit and partly on credit of the company, to meet such pressing demands; but within the last three months suits have been brought by the United States, for the benefit of an informer, against the company and most of its directors, claiming some *ten million dollars*. We are advised that such suits could not

have been instituted without the co-operation of the Administration, and were much amazed that the suits were brought.

The directors of the company cannot withhold from you an expression of their opinion that the suits are an unmitigated outrage. The astonishing spectacle is presented of the largest creditor of the company seeking, by penal action, to utterly destroy the credit of the company and all the individuals who are interested in it except the first-mortgage bondholders. The credit of the company is gone, and the only wonder is that the personal credit of the directors has not been sacrificed also. With the manifestation of hostility which the Government has shown against the company in the last three years, the directors are unwilling to lend further aid in support of the company, and unless the Government will pay the moneys now due, amounting, as per statement below, to \$485,387.50, to be applied to the payment of interest on the first-mortgage bonds, I do not see how it is possible to prevent a default on the first of November next, the consequences of which no one can now foresee. I hope that the President will order the money to be paid, if *you* do not feel justified in doing so.

I beg you to understand that it is not out of any personal disrespect to yourself or to the President that I have thought it a duty to write so plainly as I have respecting the action of the Government towards this company.

When it is remembered that the company constructed nearly 700 miles of railroad, for the most part through a hostile Indian country, with money aid from the Government for but 384 miles of such road, of all of which, and of more than 200 miles of branch and leased roads operated by the company in addition, the Government claims and has had the primary use for the last three years, without paying according to contract, must not all just persons hold with the company that the action of the Government has been unjust and oppressive to the last degree?

The company has endeavored to come to an amicable settlement with the Government, but all its appeals have been disregarded; and to further cripple it, one law after another has been passed to its great injury. We feel that the Government is dishonored in refusing to pay in accordance with its contract, expounded by its own court. All the company desired or expected was that its contract with the Government should be carried out. Without this it cannot survive. It does appear, indeed, that if the Government had been determined to reduce the company to bankruptcy, it could not have taken more effective measures to accomplish it.

Again I beg you to come to the relief of the company, direct the payment of what the Supreme Court of the United

States has, in the Union Pacific suit, in effect decided to be due to the company, and save it from impending disaster.

Very respectfully, your obedient servant,

ADOLPHUS MEIER,
President.

Hon. LOT. MORRILL,
Secretary of the Treasury, Washington, D. C.

Note:

The total amount due from Government up to October 1, 1876, is.....\$970,775 00
Less half the amount to be retained as per acts of Congress..... 485,387 50

Leaving the amount due this company in cash....\$485,387 50

Besides the full amounts due on the Arkansas Valley and Junction City and Fort Kearney Railways, being about \$80,000.

ADOLPHUS MEIER,
President.

“EXHIBIT D.”

Comparative cost of operating the mountain and valley divisions of the Central Pacific Railroad.

It appeared to be clearly proved that the cost of operating the mountain division of the Central Pacific Railroad was from five to six times that of the valley divisions. From the evidence it appears the prominent feature of the increased cost is the increased power required, and actually used, in doing the business of the road on the mountain division. Trains of forty-five loaded freight-cars arriving at Rocklin, the first eastern station of that division, and drawn by one engine of medium weight and power, requires to be divided up into five trains of nine cars each, having an engine of larger power, before it can be lifted over the mountain from Rocklin to Truckee. Here is at once five times the expense of handling a given number of cars entailed upon the management over and above that incurred in the valleys. But a severe and additional expense must also enter into the calculation from the fact that these larger engines tear and destroy the track in a much-increased ratio; that the use of brake-power upon the train, in consequence of high grades, flattens wheels and grinds the rail, and that the strain on the beds and frames of cars demand a larger element of repairs than anywhere else on the line—swelling the increased cost of handling the traffic of the road from five to seven times that entailed in the valleys. When this comparison is applied to the charges actually made, it will be seen that, as severe as

are the natural difficulties, the company require the through traffic to bear a very large share of the expense of doing the local business upon that division. From the engineering experts on the stand the committee gathered interesting corroboration of the main facts relating to this increased cost. It appears that experience and calculation have demonstrated that for every rise of twenty feet in a mile the work required to overcome the same is equal to the traversing of an additional mile of level line. In other words, one mile of road with a grade of twenty feet is equal to two miles of level road. This is a rule now universally admitted, and not at all depending upon the testimony of any individual.

"EXHIBIT E."

UNION PACIFIC RAILROAD COMPANY,
GENERAL FREIGHT DEPARTMENT, OMAHA, Dec. 13th, 1877.

DEAR SIR: In accordance with your request, I give below figures which show the difference between our local rates from Cheyenne to Ogden, and the proportion between Cheyenne and Ogden of the through rates from San Francisco, this proportion being figured upon a *pro rata* mileage basis; a basis which is, as I shall show, wholly untenable, if the character of the road between Ogden and Cheyenne be compared with that of the remainder of the line.

The difference between the rates per ton per mile charged respectively by the Union Pacific and Denver Pacific Railroads on their local business is also shown in the following statement, *i. e.*:

	1st class.	2d class.	3d class.	4th class.
The present through rates, Omaha to San Francisco, are.....	\$4 50	\$3 75	\$2 75	\$2 25
Of which a <i>pro rata</i> proportion between Cheyenne and Ogden gives.....	1 20	1 00	73	59
Being rate per ton per mile of.....	04.6	03.9	02.8	02.3
Local rates between Cheyenne and Ogden are..	2 19	1 91	1 63	1 42
Rate per ton per mile on same.....	08.4	07.4	06.3	05.5
Local rates from Cheyenne to Denver are.....	1 00	75	50	40
Rate per ton per mile on same.....	18.8	14.1	09.4	07.5
Difference in rate per ton per mile between our local rate and the <i>pro rata</i> proportion of through rate.....	03.8	03.5	03.5	03.2
Excess per ton per mile charged by Denver Pacific Railroad over that of the Union Pacific Railroad in local rates.....	10.4	06.7	03.1	02

There are some differences in the classifications used, but the above figures form as fair a basis for comparison as can be made.

In the above statement the proportion of the through rate from Omaha to San Francisco earned between Cheyenne and Ogden is given as $\frac{516}{1914}$ of the through rate, after deducting the charge for transfer across the Bay of San Francisco of 5 cents per hundred pounds.

In reality, however, the proportion earned between Cheyenne and Ogden is much greater than $\frac{516}{1914}$, as the cost of hauling freight between those two points is much greater than upon any other portion of the Union Pacific Railroad.

From Ogden to Cheyenne the road crosses three mountain ranges, viz., the Wahsatch mountains, the main range of the Rocky Mountains, and the eastern range between Cheyenne and Laramie, sometimes called the Black Hills.

The ranges are crossed at great elevations and by very heavy grades, the elevation of the summit in each case being 7,835 feet, 7,030 feet, and 8,242 feet above the level of the sea. The adverse grade met in going from Ogden to Cheyenne amounts to about 8,000 feet, or over one and a half miles.

It is generally admitted that each 20 feet of elevation costs as much as 1 mile of haul upon level grade. If this allowance be made, the cost of haul between Cheyenne and Ogden (516 miles) is equal to a haul of 900 miles upon a comparatively level road, such as the Kansas Pacific or the eastern end of the Union Pacific. The cost of haul is still further increased by the sharp curves met while crossing the mountains.

The experience of the past winter has shown that extremely heavy expenditures will be necessary to protect this portion of the road against snow during nearly half of the year.

Upon the remainder of our road comparatively little trouble is experienced.

If we had a large local business upon the western end of our road it would help to pay this extra expense, but the fact is that but very little business originates upon it, and the expense of keeping up the road must be borne entirely by our through business.

While the eastern end of the road is being rapidly settled, this western half is almost without inhabitants. No land has been sold by the company here, and much of the country is probably uninhabitable.

If all the facts are taken into consideration, I think that the real cost of hauling freight over the 516 miles between Cheyenne and Ogden is equal to the cost of hauling twice that dis-

tance over the nearly level and straight road east of the mountains.

Notwithstanding the great difference between the character of our line west of the Rocky Mountains and that of the Kansas Pacific or other line east of that range, we have kept our local rates, as well as those for our through business, down to as low rates per ton per mile as are charged by the Kansas Pacific Railway, as may be seen by the following comparison:

	1st class.	2d class.	3d class.	4th class.
Rates between Ogden and Cheyenne.....	\$2 19	\$1 91	\$1 63	\$1 42
Rates between Kansas City and Denver.....	2 40	2 00	1 75	1 40

It may also be said that at Denver there is competition for freight business, while between Cheyenne and Ogden there is no competition whatever. In view of the above facts, I am at a loss to see how the Kansas Pacific Railway Company, Denver Pacific Railway Company, or any other company or individual, can complain with justice of our rates between Ogden and Cheyenne.

Since the completion of the Union Pacific and Central Pacific Railroads the average rate charged per ton per mile has been steadily reduced. A still greater reduction may be made upon some classes of goods, upon which a very low rate is necessary in competition with water routes, if the freight can all go, as heretofore, over the line of our road.

Should any material portion of it be diverted at Cheyenne, or any other point, our revenue would be so affected as to render any further reduction impossible. Should such a division of our legitimate business take place, it would probably prove more remunerative to us to cease our active competition with the clipper lines, *via* the Horn, upon the heavy freight which we are now sharing with them, and, by carrying only first-class freight, be enabled to raise our average rate per ton per mile.

Any action which should compel us to haul freight over the unsettled, mountainous, and expensive portion of our line, and then deliver the goods to some other company to haul over a smooth and well-settled country, and which should compel a division of rates upon a *pro rata* or other similar basis, could not but be so disastrous to us as to render the Union Pacific Railroad wholly unremunerative.

Such a consequence would affect not only the stock and bond-

holders of the company, but would reach the whole country, in rendering the ultimate redemption of the bonds given by Government impossible.

We have hoped that the bulk of the business between China and Japan, upon one side, and Europe on the other, would eventually seek the American overland route. The prospects of reaching this end are becoming more and more encouraging, and before long this business will largely seek this route, if it is not killed in its infancy by unwise legislation and interference with the laws of trade.

No road in the United States gives up its business to a rival after hauling over half the length of its road.

None of the eastern roads ask or expect us to pro-rate with them, but all have freely consented to give us about 50 per cent. more than we would be entitled to upon such a basis.

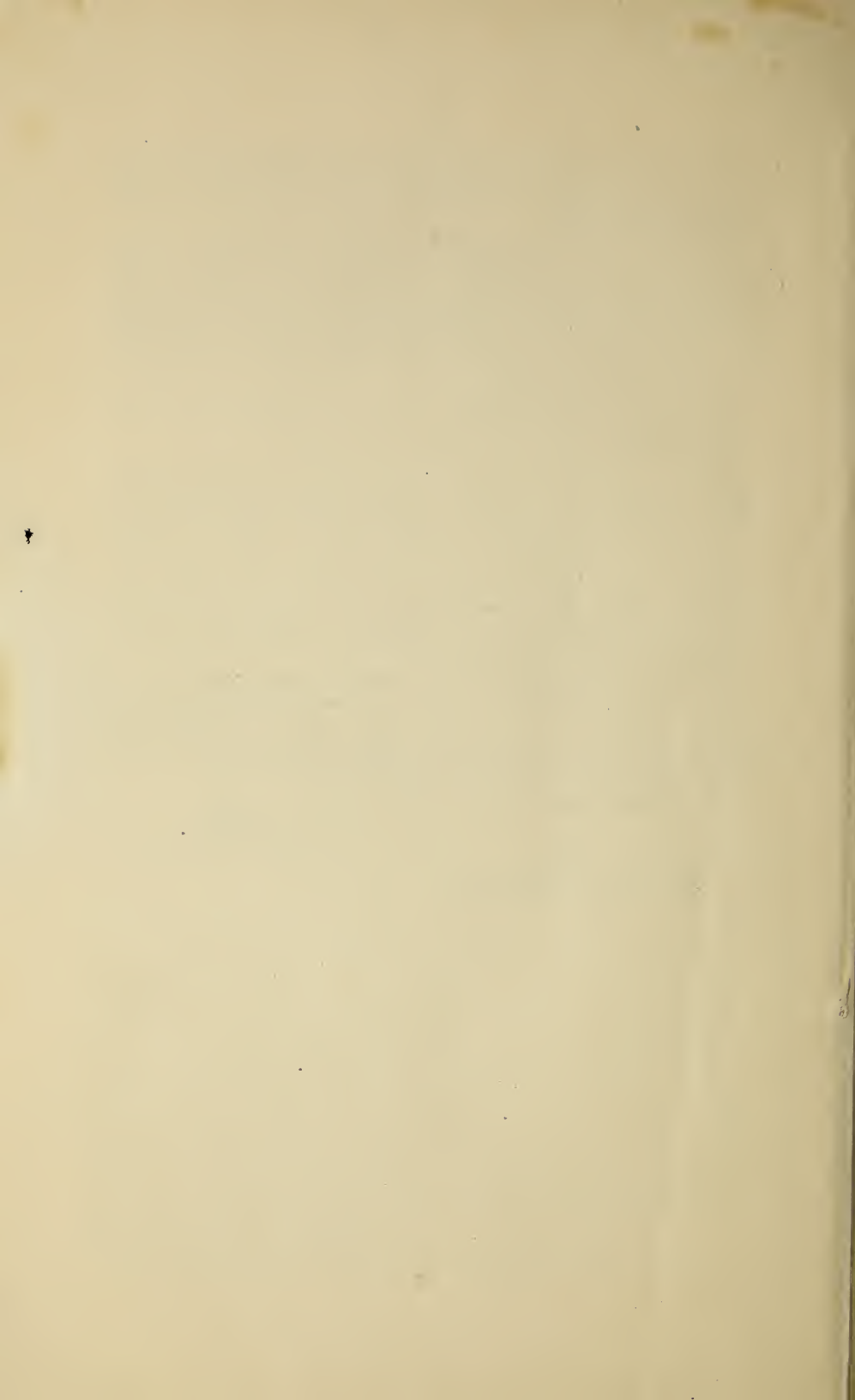
They have not consented to this because of lack of competition, as we meet with as severe competition by the water route as any road in the country can meet from a rival line; but simply because the characteristics of the western end of our road entitle us in justice to a much greater rate per ton per mile than proves a fair compensation for them.

You are undoubtedly as well acquainted with the foregoing facts as myself, but I have stated them merely that the reasons for my assertion, that much more than a *pro rata* proportion of the through rates was earned upon that portion of our road between Ogden and Cheyenne, might be clearly shown.

Yours, truly,

E. P. VINING,
General Freight Agent.

A. J. POPPLETON, Esq.,
Attorney Union Pacific Railroad.



UNIVERSITY OF ILLINOIS-URBANA



3 0112 109606639